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On 5-2-03

TOWNSEND and TOWNSEND and CREW LLP

By: Karen Karlin

**PATENT**  
Docket No.: 014058-009811US  
Client Ref. No.: CX-98-0028-1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

CHEEVER et al.

Application No.: 09/854,356

Filed: May 9, 2001

For: HER-2/NEU FUSION PROTEINS

Examiner: Misook Yu

Art Unit: 1646

**RESPONSE TO RESTRICTION REQUIREMENT**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement mailed March 4, 2003, Applicants elect Group I, claims 113-114 in part, 115, and 117-124 in part, drawn to method for eliciting or enhancing an immune response to HER-2/neu protein, using SEQ ID NO:6 as the main active ingredient.

A petition for extension of time to respond for one month from April 4, 2003, to May 4, 2003, is submitted herewith.

**REMARKS**

Restriction of an application is discretionary, and a restriction requirement is made only to avoid placing an undue examination burden on the Examiner and the

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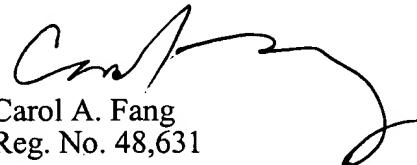
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Office. Where claims can be examined together without undue burden, the Examiner must examine the claims on the merits, even though they are directed to independent and distinct inventions. MPEP §803.01.

Since Groups I-IV are closely related inventions based on the same inventive concept of eliciting or enhancing an immune response to HER-2/neu protein using a HER-2/neu fusion protein or a nucleic acid encoding such a fusion protein, Applicants respectfully submit that examining the claims of Groups I-IV together would not place an undue burden on the Examiner. As such, Applicants make the election with traverse and request that the restriction requirement be withdrawn.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

  
Carol A. Fang  
Reg. No. 48,631

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